

## DEPARTMENT OF STATE REVENUE

04-20080070P.LOF

**Letter of Findings Number: 08-0070P  
Sales and Use Tax  
For the Tax Period 2004-2006**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration - Ten Percent Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2\(b\)\(c\)](#).

The Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

The Taxpayer is a Limited Liability Company operating a car dealership that opened for business in October 2005. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed additional use tax, sales tax, penalty, and interest. The Taxpayer paid the tax assessments and protested the penalty assessment. A hearing was held and this Letter of Findings results.

**I. Tax Administration - Ten Percent Negligence Penalty.**

**DISCUSSION**

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer purchased items in setting up its Indiana business without paying sales tax at the time of the purchases. Most of these items were purchased from another car dealership owned by the owners of the Taxpayer. Since the Taxpayer did not remit use tax on the items, the Department assessed use tax in the audit. The Taxpayer argues that the Department should waive the negligence penalty because the Taxpayer was a new business and innocently failed to remit the taxes due to the state.

The Department notes that the owners of the Taxpayer also owned at least one car dealership in Illinois. Although the intricacies and specifics of the Indiana and Illinois sales and use tax laws differ, the basic concepts are the same. The Taxpayer should have known that it owed use tax on the items it purchased to set up the dealership.

On at least one occasion, the Department has already waived the negligence penalty on an assessment in consideration of the Taxpayer's length of time in business.

The Taxpayer did not establish that it used reasonable care in the conduct of its business. The Department properly imposed the negligence penalty.

**FINDING**

The Taxpayer's protest to the imposition of the penalty is respectfully denied.

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